

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

In the Matter of the
Application for Post
Conviction Relief of:

JON WOODARD

Applicant.

Case No. 3ANS 00-6982 Civ.
3ANS 92-5238 Cr.

SUPPLEMENTAL BRIEFING
IN SUPPORT OF POST-CONVICTION RELIEF

VRA CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

COMES NOW JON WOODARD, by and through counsel, and hereby
supplements the briefing in support of his application for post-conviction relief as
follows.

The evidence produced at the hearing granted by the court indicates that
the state was aware of the identity of Defendant X from the time John Murtagh
communicated his existence to Assistant District Attorney Steve Branchflower.
The desire for confidentiality was Mr. Murtagh's, it was not the prosecution's idea
to protect the source of the information. By the time of the search warrant
proceeding, there was no reason not to identify the name of the tipster William

1 Turlington. There was no justification for withholding his identity from the court
2 during the search warrant proceedings or from Mr. McComas in the course of his
3 representation of Mr. Woodard. Mr. McComas was obviously interested in
4 obtaining information which could lead to arguments supporting the defense
5 theory that someone else committed the felony murder and robbery. Mr.
6 McComas obviously defended on the ground that Mr. Woodard had been set up.
7 Neither of the state's key witnesses implicating Woodard could ever pass a lie
8 detector test and identity was a hotly disputed issue.
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11 Mr. McComas moved to compel discovery of all informants under
12 Criminal Rule 16 and the court granted this request. There can hardly be a dispute
13 that Mr. Turlington was an informant and that his identity was withheld. The
14 duties under Criminal Rule 16 and constitutional due process requirement to
15 provide disclosure of information that is favorable and exculpatory to the accused
16 continues post trial. See Strickler v. Greene, 119 S.Ct. 1936, 1948 (1999); Kyles v.
17 Whitley, 115 S.Ct. 1555, 1565 (1995); Carriger v. Stewart, 132 F.3d 463, 481 (9th
18 Cir. 1997)(en banc); Com. of Northern Mariana Islands v. Bowie, 236 F.3d 1083,
19 1089-90 (9th Cir. 2001); Boss v. Pierce, 263 F.3d 734, 740-43 (7th Cir. 2001).
20

21 The identity and criminal history of Turlington was exculpatory and
22 material. All of the benefits that accrued to him throughout the course of his case
23 was exculpatory and material information. Turlington was amply rewarded for his
24 services in connection to Woodard's case. Rewards were continually heaped on
25 him through the proceedings in his case. Petitions to revoke were not filed,
26 favorable dispositions were awarded, a set aside of a conviction occurred despite a

1 clear absence of jurisdiction. This for a man that committed a theft from Carrs a
2 week after the verdict in this case.

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4 What exactly was communicated by Turlington in the "tip" is in some
5 doubt. The state reported at the search warrant proceeding that Dave Van
6 Housen's father John told him that he had heard his son say that noone was
7 supposed to get killed during the robbery. This lead the father to believe his son
8 might know about what had happened. Det. Reeder's typewritten report indicated
9 that Turlington had information concerning the Carr's robbery/felony murder.
10 According to his trial testimony, the information concerned Dave Van Housen
11 setting up the robbery. However, Dave Van Housen was presented at the search
12 warrant proceeding as being innocent of involvement. If the information was that
13 Van Housen set up the robbery and that was not reported to the judge at the search
14 warrant proceedings, there is a significant failure in communicating all the state
15 knew concerning Turlington.

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17 Turlington communicated John Van Housen's concern about his son's
18 possible involvement or knowledge of the Carrs robbery through John Murtagh.
19 Mr. Murtagh reported he believed his client would be interviewed or asked to wear
20 a wire and his client was undecided whether he wanted to cooperate to that extent.
21 Murtagh decided to keep his client's identity secret from the state to avoid having
22 to commit him to either of those activities. However, the state immediately
23 identified Turlington as the client to whom Murtagh referred. Turlington's desire
24 to "lay low" and not provide any direct assistance is of direct interest in Woodard's
25 defense case. If Turlington were the innocent, appalled citizen with no nefarious
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1 agenda, one would expect his identity to be plainly presented in order for him to
2 receive the benefit he and his attorney could reasonably expect in response to his
3 assistance. The circumstances of Mr. Murtagh's keeping Turlington's identity
4 secret smacks of possible hidden motives and biases. These circumstances were
5 material to a thorough defense investigation. These circumstances were withheld
6 from Mr. McComas by the state without any excuse or authority. The state did
7 not obtain the information from Murtagh in exchange for any promise of
8 confidentiality. It was the state that Turlington wanted to keep in the dark. Once
9 the cat was out of the bag and the state guessed his identity, the need for secrecy
10 was terminated. There was absolutely no justification for not disclosing the
11 identity, known by the state, to Woodard. McComas attempted to investigate the
12 benefits that would be accorded to Turlington for his information. He asked Mr.
13 Murtaugh whether any benefit had been promised to Turlington for providing the
14 "tip" as reported at the search warrant proceeding. However, all the various
15 benefits that were accorded by the state were never revealed to him.

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19 McComas was also not told that Turlington was himself involved in
20 robberies, had a rather serious cocaine distribution case pending, and hesitated to
21 really provide any help to the state. He was not told that Turlington lied about his
22 criminal history, which the state apparently colluded in by refraining to ascertain
23 his prior criminal history before engaging in negotiations highly favorable to him.

24
25 Turlington was out of custody at the time of the Carrs robbery. His bail
26 status was not made plain by the state. Freedom of movement meant that

1 Turlington was in a position to have had frequent contact, not just with Murtagh
2 but also with Dave Van Housen and others involved in the Carrs case.
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4 It is shocking, in light of Det. Reeder's report that Turlington knew about
5 the Carrs robbery, that the police did not make any inquiry into the source of
6 Turlington's information by interviewing him. Van Housen lead the police and the
7 court a merry chase with many inconsistent statements about his own involvement.
8 Van Housen pointed the finger at Jon Woodard, but this was easily the result of
9 providing a plausible alternative to himself and the real accomplice. What
10 Turlington knew was certainly essential to a fair and full investigation by the
11 police of Van Housen's involvement. It appears the blinders were on, and anyone
12 pointing the finger at Woodard was going to be tolerated as long as they continued
13 to do so.
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15 There can be no doubt that the information about Turlington's identity and
16 his past criminal history and the benefits he received was discoverable under
17 Criminal Rule 16 and fell within the parameters of the motion to compel and due
18 process requirements. Had discovery of Turlington's identity and criminal history
19 been provided, it definitely would have had an impact on the course of the defense
20 investigation and could well have affected the outcome at trial. As Mr. McComas
21 testified, the timing of disclosure would have affected how he proceeded with the
22 information. Given ample time, he could well have developed Turlington's secret
23 fingerprinting and knowledge to divert the state's attention from the only other
24 poorly identified suspect.
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In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10
L.Ed.2d 215 (1963), the Supreme Court held that the

1 prosecutor is required to disclose evidence to a criminal
 2 defendant that is favorable to the accused and material
 3 either to guilt or punishment. In United States v. Bagley,
 4 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), a
 5 majority of the United States Supreme Court concluded that
 6 in order for a criminal defendant to avail himself of relief
 7 under *Brady*, he must show that governmental action
 8 deprived him of "material evidence." Evidence is material
 9 only if there is a reasonable probability that, had the
 10 evidence been disclosed to the defense, the result of the
 11 proceeding would have been different. 473 U.S. at ---, 105
 12 S.Ct. at 3384, 87 L.Ed.2d at 494 (opinion of
 13 Blackmun and O'Connor, J.J.) and 473 U.S. at ---, 105
 14 S.Ct. at 3385, 87 L.Ed.2d at 496 (opinion of White and
 15 Rehnquist, J.J. and Burger, C.J.). A reasonable probability
 16 is a "probability sufficient to undermine confidence in the
 17 outcome." 473 U.S. at ---, 105 S.Ct. at 3384, 87 L.Ed.2d at
 18 494 (opinion of Blackmun and O'Connor, J.J.). The Alaska
 19 Supreme Court has adopted a similar standard of
 20 materiality, at least where, as here, the state is under no
 21 specific duty, derived from rule or case, to preserve the
 22 evidence in question. See Putnam v. State, 629 P.2d 35,
 23 43-44 (Alaska 1980); Carman v. State, 604 P.2d 1076,
 24 1080-81 (Alaska 1979) (recognizing that materiality test is
 25 essentially one of harmless error).

26 St. John v. State, 715 P.2d 1205, 1211-12 (Alaska App. 1986).

There was a significant chance in this case that Turlington's lies about his
 own status, his criminal history, his desire for secrecy, his status as a big cocaine
 distributor, his friendship with John Van Housen, and the state's extensive and
 prolonged grants of leniency, when taken together, could have affected the course
 of investigation and ultimately the outcome of the trial. In the hands of a brilliant
 attorney such as Jim McComas, this information undoubtedly would have been
 exploited fully and successfully. This court should not find that the failure to
 disclose was harmless error.

1 The state was under an obligation to disclose the identity of persons
 2 known to the state to have information against Woodard and any favorable
 3 information under the court rules and the due process clauses of the state and
 4 federal constitutions. The state failed to do so. As a consequence, Woodard was
 5 deprived of his right to due process, a fair trial, and he should be granted a new
 6 trial.
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8 Dated this 30th day of January, 2002.
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11 Leslie Hiebert
 12 Assistant Public Advocate
 13

14 This is to certify that a copy of the foregoing
 15 is being made/delivered to Mary Ann Henry
 16 on 1/30/02 By ALM
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